



7020-02

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1005 (Remand)]

### **Certain L-Tryptophan, L -Tryptophan Products, and Their Methods of Production;**

### **Notice of a Commission Determination Vacating the Portion the Final Determination Relating to United States Patent No. 6,180,373 and the Limited Exclusion Order Based Thereon**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to vacate the portion of its final determination relating to United States Patent No. 6,180,373 (“the ‘373 patent”) and its limited exclusion order based thereon.

**FOR FURTHER INFORMATION CONTACT:** Houda Morad, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On June 27, 2018, the United States Court of Appeals for the Federal Circuit found that a portion of the consolidated appeal in *Ajinomoto Co., Inc. v. International Trade Commission*, Appeal Nos. 2018-1590, -1629, was moot by reason of the expiration of the '373 patent and remanded the investigation to the Commission to determine whether to vacate the portion of the underlying final determination relating to the '373 patent.

The Federal Circuit appeal at issue stemmed from *Certain L-Tryptophan, L-Tryptophan Products, and Their Methods of Production*, Investigation No. 337-TA-1005. This investigation was instituted based on a complaint filed by Complainants Ajinomoto Co., Inc. of Tokyo, Japan and Ajinomoto Heartland Inc. of Chicago, Illinois (collectively, "Complainants"). *See* 81 Fed. Reg. 38735-36 (June 14, 2016). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain L-tryptophan, L-tryptophan products, and their methods of production by reason of infringement of certain claims of U.S. Patent No. 7,666,655 ("the '655 patent") and U.S. Patent No. 6,180,373 ("the '373 patent"). *See id.* The notice of investigation identified CJ CheilJedang Corp. of Seoul, Republic of Korea, CJ America, Inc. of Downers Grove, Illinois, and PT CheilJedang Indonesia of Jakarta, Indonesia (collectively, "Respondents") as respondents in this investigation. *See id.* The Office of Unfair Import Investigations was not a party to the investigation. *See id.*

On August 11, 2017, the Administrative Law Judge issued his final initial determination finding no violation of section 337. On December 18, 2017, the Commission reversed and found

a section 337 violation with respect to both the '655 and the '373 patents. The '373 patent expired on January 30, 2018.

On February 27, 2018, Respondents filed a notice of appeal of the Commission's final determination with the Court of Appeals for the Federal Circuit. Their appeal was consolidated with Complainant's appeal filed on February 16, 2018. In addition, on May 25, 2018, Respondents filed a corrected motion that sought partial dismissal of the appeal with respect to the now-expired '373 patent, vacatur of the related portions of the Commission's final determination, and remand to the Commission with an instruction to dismiss the related portion of the complaint. The Commission did not file a response to Respondents' motion. On June 4, 2018, Complainants filed a response to Respondents' motion and indicated that while it agreed to the partial dismissal of the appeal, it objected to the vacatur of the portion of the Commission's final determination.

On June 27, 2018, the Federal Circuit granted Respondents' motion "to the extent that this matter is remanded for the limited purposes of allowing the Commission to address whether to vacate its final determinations relating to the '373 patent." *Ajinomoto Co., Inc. v. Int'l Trade Comm'n*, Consolidated Appeal Nos. 18-1590, -1629, Order at 3 (ECF No. 38) (Fed. Cir. June 27, 2018). The Federal Circuit retained jurisdiction over the remainder of the appeal, which it affirmed on August 6, 2019. *Ajinomoto Co., Inc. v. Int'l Trade Comm'n*, 932 F.3d 1342 (Fed. Cir. 2019). A petition for writ of certiorari was filed with the Supreme Court on February 24, 2020. *CJ CheilJedang Corp. v. Int'l Trade Comm'n*, No. 19-1062 (filed Feb. 24, 2020).

The Commission has determined to vacate the portion of its final determination relating to the '373 patent and its limited exclusion order based thereon. The Commission's opinion is being issued concurrently herewith. The Commission hereby terminates this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: March 5, 2020.

William Bishop,  
Supervisory Hearings and Information Officer.

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